

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10774 of 2000
WITH
SPECIAL CIVIL APPLICATION No. 10775 of 2000
TO
SPECIAL CIVIL APPLICATION No. 10776 of 2000

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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BABUBHAI BECHARBHAI - Petitioner(s)

Versus

CUT FAST GRAINS LTD & 1 - Respondent(s)

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Appearance :

MR VIKRAM J THAKOR for Petitioner(s) : 1,
 MR JV JAPEE for Respondent(s) : 1,
 SERVED BY RPAD - (R) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/08/2007

ORAL JUDGMENT

1. Mr.Vikram Thakor, learned counsel for the petitioner,
 Mr.J.V. Japee, learned counsel for the respondent No.1,
 none for the respondent No.2 though served, in each of

the petition.

2. The petitioners, being aggrieved by the award dtd.11/4/2000 passed by the Labour Court, Jamnagar in Reference (LCJ) Nos.2052, 2053 and 2055 of 1990, are before this Court under Article 227 of the Constitution of India with a submission that the awards made by the Labour Court are patently illegal.
3. Mr.Thakor, learned counsel for each of the petitioner submitted that the Court below misinterpreted the words 'Hak-Hissa' and erred in holding that each of the petitioner wanted some amount which was unpaid. He submitted that from the details of the claim and the statements of the witnesses, it would clearly appear that each of the petitioner was asking for reinstatement with full back wages. According to him, even in the operative portion of the award, nothing has been decided by the court below and the court has simply observed that each of the petitioner be paid according to his entitlement, but the court does not decide as to what is the entitlement.
4. Mr.Japee, learned counsel for the respondent No.1 in each of the case submits that after the alleged termination, the matter was settled between the parties,

a compromise deed was recorded and dues of each of the petitioner were paid to him. According to him, the court below was not unjustified in directing that the balance amount, if any, be paid to the workmen, specially when the employer Company has been taken over by some other Company.

5. Mr.Thakor, learned counsel for the petitioner in each of the case, however, submits that the court below was wrong in holding that the employer Company stands closed while, in fact, it was taken over by some sister Company and the respondent employer has not produced the terms and conditions on which the respondent Company has merged in or has been taken over by some other Company.
6. In para 4 of the award, the learned Court below has referred that the workmen have said that they have filed claim for their 'Hak-Hissa', in para 6 of the award, the learned court below has interpreted the words 'Hak-Hissa', meaning that they were entitled to some dues.
7. In the opinion of this Court the words 'Hak'Hissa' would not mean some monetary dues, but would mean right and share. It is also to be noted that the respondent had produced certain compromise deed, but the learned court

below did not rely upon the same and has made the awards. In para 6 of the award, the court below has not relied upon the compromise deed on the ground that the said compromise deed does not mention the amount paid to the workmen. The court below though observed that the employer Company is closed but these observations made by the court is contrary to the records. In fact, the respondent Company has been either taken over or has merged into some sister concern Company. When a Company is taken over by some other Company or merges in some other Company, then, the terms of the merger or the terms for taking over, would always assume importance, because, such terms and conditions decide the fate of the workmen working in the merged or taken over Company. In these matters, the respondent Company on one side was contesting the litigation and at the same time, was submitting that it stands closed because of the merger. If the Company had already merged in or was taken over by some other Company, then, the respondent Company was required to inform the Labour Court to substitute the other Company in which the respondent Company has merged.

8. Taking into consideration the totality of the

circumstances, I am of the considered opinion that the awards made by the Court below cannot be allowed to stand. The impugned awards are accordingly quashed. The matters are remanded to the Labour Court with a direction that it shall allow the parties to lead further evidence in the matter, would allow the parties to summon the records and would also allow each of the petitioner to join the Company in which the respondent Company has merged. If such an application is filed, then, the application would be allowed by the court below and the court below would secure attendance of other Company. After giving due opportunity to the parties, the Labour Court shall decide the matter on merits without being influenced by the words 'Hak-Hissa'.

9. The parties present in this Court shall appear before the Labour Court on 26/9/2007. It shall be the duty of each of the petitioner to file a certified copy of this Judgement enabling the learned court below to know what it is required to do.
10. The Labour Court shall finally dispose of the matters within a period of ten months from the date of appearance of the parties.
11. All the petitions are allowed with the directions aforesaid.

Rule is made absolute in each of the petition to the extent indicated above. No costs.

(R.S. GARG, J.)

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